87-37



Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

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MARGUERITE EADES,

v. Petitioner,

DONALD J. STERLINSKE, BRADLEY W. HUFF, and JULIE EWALD,

Respondents.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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# BRIEF OF RESPONDENTS, DONALD J. STERLINSKE AND BRADLEY W. HUFF, IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND SUPPLEMENTAL APPENDIX

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The respondent Donald J. Sterlinske, reflecting his judicial status at all times material herein, shall be hereinafter called "Judge Sterlinske;" the respondent Bradley W. Huff, reflecting his status as a Wisconsin circuit court reporter, "Reporter Huff;" respondent

Julie Ewald, reflecting her status as a deputy clerk of circuit court, "Clerk Ewald;" and the petitioner, "Eades."[1]

## QUESTION PRESENTED FOR REVIEW

Judge Sterlinske and Reporter Huff submit that the three questions discerned by Eades as presented for review herein are too numerous, and also objectionable for other reasons.[2] Such respondents

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[1]The official status of Judge Sterlinske is alleged in the Complaint (Supp. App. 103) and First Amended Complaint herein (Supp. App. 115), while that of Reporter Huff is alleged in the First Amended Complaint (id.).

[2]What Eades discerns as the second question presented for review herein is particularly objectionable because it refers to "the spinning of a clerk's date stamp to fraudulently back date a fabricated record", despite the fact that there is no allegation of such "spinning" in either the Complaint or First Amended Complaint (hereinafter "F.A.C."). The second Eades-discerned question erroneously characterizes as "ministerial" acts of Reporter Huff and Clerk Ewald which, as is clear from both the Complaint and (Footnote Continued)

submit that there is but one question

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F.A.C., and as found by the Court of Appeals (App [sic]), were discretionary in character. The third Eades-discerned question is also objectionable, in its reference to "a jury instruction conference never held in a criminal proceeding," with its implication that the non-holding of such conference was a fact well pleaded which the trial court had to accept as true on respondents' dismissal motion. It is true that both the Complaint and F.A.C. state that at no time during the course of the trial was there held, in the words of the Complaint "an instruction and verdict conference" (Supp. App. 103), and, in the words of the F.A.C., "a jury instruction and verdict conference" (Supp. App. 116). Such statement, however, is a conclusion of law rather than an allegation of fact, or at best, a mixed conclusion of law and allegation of fact; in either case not a "fact well pleaded" to be taken as true on a dismissal motion. Moreover, the statement in the Complaint that Judge Sterlinske directed Reporter Huff "to indicate in the certificate that a full-fledged instruction conference had taken place in Sterlinske's chambers even though such a conference had not in fact occurred" (emphasis supplied; Supp. App. 104-05) and the same statement in the F.A.C. (except that it refers to "a full-fledged instruction and verdict conference"; see Supp. App. 118), clearly imply that an "instruction and verdict conference", though not "full-fledged", had occurred during Eades' criminal trial.

presented for review herein, to wit: Did the Court of Appeals err in upholding the District Court's dismissal of this action against Judge Sterlinske and Reporter Huff, on the basis of their judicial immunity thereto?[3]

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[3]In referring to "this action" herein, it should be observed that such term does not include the "Plaintiff's Third Cause of Action" for "civil conspiracy" (Supp. App. 128-30). As stated at p. 2 of Eades' "Brief and Appendix of Plaintiff-Appellant", of which this Court make take judicial notice, filed in the Court of Appeals, "The civil conspiracy claims, as alleged by the third cause of action in the Amended Complaint, were dismissed as to all defendants by stipulation and are not an issue on appeal."

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## STATEMENT OF THE CASE

This statement is deemed necessary in order to correct certain inaccuracies and omissions in Eades' "Statement of the Case."

At p. 3, of Petition, it is stated unequivocally that Eades' "was imprisoned for nine months as a result of the unconstitutional acts of defendants." (Emphasis supplied.) The Petition, at p. 7, states in pertinent part: "Relying upon the altered record, Sterlinske attempted to dissuade the new counsel from making post-conviction motions. Sterlinske later relied on the fictitious instruction conference to deny post-conviction motions. Sterlinske then sentenced Eades to two years in prison. Eades served nine months in prison." (Emphasis supplied.)

The clear import of these statements is that it was after the Eades' trial record had been altered, and after Judge Sterlinske engaged in certain described conduct subsequent to such alteration, that he "then" sentenced Eades to two years in prison, with Eades then serving nine months of such sentence.

As the F.A.C. itself shows, it is grossly inaccurate to imply, as does the Petition in its above-quoted portions, that Eades, after the acts complained of occurred, was sentenced and then commenced to serve and served nine months imprisonment, in the language of the Petition, "as a result of" such acts. Such acts were not just post-trial, but post-sentencing. As stated in Para. 25, F.A.C. (Supp. App. 123), ". . . Eades served nine months in prison. Eades was in prison from December 16, 1980 to

approximately September 6, 1981." (Emphasis supplied.) But the F.A.C. alleges that it was "on some day after January 29, 1981", meaning at least nearly 1 and 1 1/2 months after Eades commenced serving her sentence, that several of the acts complained of occurred (see Paras. 17, 18, F.A.C.; Supp. App. 119), with several more of such acts allegedly occurring in April, 1981 (see Paras. 21, 24, F.A.C.; Supp. App. 120-23). Still another of the acts complained of, the making of an allegedly false statement in Judge Sterlinske's "decision on post-conviction motions" (see Para. 22; Supp. App. 121-22) obviously could not have occurred until May 22, 1981, the date when such decision was rendered. See Supp. App. 134-59. And while the F.A.C. contains no allegation as to just when Judge

Sterlinske dictated the certificate in question, except to aver that such act occurred "After Hertel requested a transcript for purposes of filing post-conviction motions" (Para. 14, F.A.C.; Supp. App. 117), the above-mentioned decision of Judge Sterlinske shows that such request by post-conviction defense counsel was not made until January 16, 1981. See Supp. App. 150. Thus, it is readily apparent that Eades did not serve nine months imprisonment "as the result of" the acts complained of, since such acts clearly did not occur for weeks, and in some instances, for months, after Eades commenced serving her sentence, as

alleged in the F.A.C., on December 16, 1980.[4]

As above shown, the Petition, p. 7, states that, "Relying upon the altered record, Sterlinske attempted to dissuade the new counsel from making post-conviction motions." (Emphasis supplied). It is true that the F.A.C., in its Para. 21, alleges that Judge Sterlinske "attempted to persuade Hertel [Eades' post-conviction counsel] not to challenge the jury instructions, jury verdict, and the instruction verdict conference" (bracketed material supplied; Supp. App. 120), and that Para. 16 of the Complaint alleged, in pertinent part, that, "In a letter to Attorney Hertel,

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[4]In making this statement, there is no intent to imply, and it is not implied, that any part of Eades' nine-month imprisonment was served as the result of the acts of which she complained.

Sterlinske further attempted to persuade Hertel not to challenge the jury instructions and verdict" (Supp. App. 106); but such allegations, assuming their truth, are plainly not allegations that Judge Sterlinske attempted to dissuade Hertel "from pursuing post-convictions motions," but are merely allegations that he attempted to dissuade Hertel from raising certain questions on post-conviction motion.

At pp. 7, 8, the Petition states, "Petitioner Eades brought the present action against the respondents for their participation in a scheme which fabricated and falsely altered a criminal trial record and transcript." (Emphasis supplied.) Had such "scheme" been alleged in the plaintiff's First and/or Second Causes of Action set forth in the F.A.C., and assuming the truth of such

allegation, such statement would go unchallenged herein; but since such causes of action contain no "scheme" allegation, such statement is manifestly inaccurate and unwarranted. The allegations of the F.A.C. that "Sterlinske, Huff, and Ewald all knew that the certificate was false. The participation of each in the stamping of the certificate and the insertion of it into the record was done with the intention of misleading others, including Eades and her counsel, regarding the proceedings at trial" (Supp. App. 119-20) are clearly not allegations of a "scheme," which, as employed in the above-quoted statement from the Petition, plainly has a connotation of "conspiracy;" and, of course, the "conspiracy" allegations of the Plaintiff's Third Cause of Action (Supp. App. 128-30), dismissed by

stipulation of the parties, as above shown, lend no support to such "scheme" statement, since such allegations are not even subject to consideration herein, let alone being matters which are to be "taken as true."

The Petition, at p. 4, states that, "No jury instruction and verdict conference was held during the trial." As above shown, however, the F.A.C. clearly implies that such a conference, albeit less than "full-fledged" was held at Eades' trial; with such implication also found in the Petition's statement, at p. 5, that, "The 'certificate' represented that a complete instruction and verdict conference was held when no such conference had, in fact, been held." (Emphasis supplied.)

At p. 6, the Petition states: "Sterlinske also directed Huff to falsely alter the transcript to be consistent with the false certificate." This statement is clearly incompatible with the allegation of Para. 15, F.A.C., Supp. App. 118, that, "Finally, Sterlinske caused Huff to alter the trial transcript so that it would be consistent with its false certificate." Notably absent from such allegation is the employment of the word "falsely" before the word "altered."

The Petition, p. 7, states that, "The respondents knew that the certificate was false and knew that its creation and insertion into the record was fraudulent and for the purpose of misleading Eades and her new counsel about the proceedings at trial." This language closely tracks the allegations appearing in Para. 19, F.A.C. (Supp. App.

119-20); and, like such allegations, represents mere conclusions of Eades, rather than facts properly stated in a "Statement of the Case."

The Petition, p. 6, asserts that, "After January 29, 1981, Sterlinske caused Huff to rotate the date stamp on the Clerk of Court's filing stamp backwards to stamp the 'certificate' as filed on October 23, 1980, the trial date." This assertion clearly contains another and somewhat amplified version of the above-noted portion of the second Eades-discerned question, namely, "The spinning of a clerk's date stamp to fraudulently back date a fabricated record"; and the act described in such amplified version is not alleged either in the Complaint or in the F.A.C., and is

therefore improperly presented herein by Eades as if it were a fact.[5]

In addition to the inaccuracies above noted in Eades' "Statement of the Case", there are certain factual omissions therefrom. One is the date of Eades sentencing, December 9, 1980. See Supp. App. 149. Another is the language from the certificate in question which reads: "It was also agreed and stipulated between counsel and the Court that the Court answer the question as to the computation of the monetary amount of aid received and support furnished." This language was omitted by Eades because of her apparent belief that it is irrele-

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[5]It should be noted that such non-alleged act makes two further appearances in the Petition, outside of the "Statement of the Case," boldly stated as if it were well-pleaded fact, and even leading off the Conclusion therein! See Petition, pp. 21; 29, 30.

vant. See Petition, p. 5. It is relevant, however, by reason of the fact that Eades, though expressly and repeatedly referring to the certificate in question as "false" (see Petition, p. 7, and Para. 19, F.A.C.; Supp. App. 119), has conceded the truth of the above-quoted portion thereof by raising no challenge to its veracity in her pleadings.

## SUMMARY OF ARGUMENT

The argument presented infra may be summarized as follows:

(1) There is no merit to Eades' principal reason for granting certiorari herein, namely, her "judicial act" argument or reason. Such reason is nothing but a thinly disguised contention that this Court should grant certiorari herein in order to eviscerate the defense of

absolute judicial immunity by reviving an exception thereto briefly recognized by this Court in 1869, but with such recognition swiftly and wisely withdrawn only three years later. Eades, in making her "judicial act" argument, conceives of the acts of Judge Sterlinske, Reporter Huff, and Clerk Ewald, of which she complains, as not being "judicial acts" because of what she alleges to be their illegal and malicious nature. Such concept runs afoul of this Court's holding in Stump v. Sparkman, 435 U.S. 349, reh. denied, 436 U.S. 951 (1978). And allegations of the F.A.C., viewed in light of Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981) show acts complained of by Eades as clearly being "judicial acts."

(2) The second reason presented by Eades for claiming certiorari herein is that there is a conflict between the

decisions of the federal courts of appeals as to whether judicial immunity should extend to court reporters and clerks of court. This Court has made it plain that only where such a conflict is "real and embarrassing" will it serve as a valid reason for granting certiorari. The conflict here in question, though real enough, is plainly not "embarrassing," for reason discussed. Clearly, then, Eades' "conflict between the circuits" reason for granting certiorari herein is meritless. And even if it were not, it would provide a valid reason for issuing writ herein only as to so much of the decision in question as accorded judicial immunity to Reporter Huff and Clerk Ewald.

(3) The third reason advanced by Eades for granting certiorari herein is that the decision by the Court of Appeals

extends absolute judicial immunity to the ministerial activities of clerks and court reporters. This gambit of labeling (or, as here, mis-labeling) a part of the judicial process as "ministerial" has rightly been viewed as impermissible in Lowe v. Letsinger, 772 F.2d 308 (7th Cir. 1985), in language quoted.

(4) Certain other reasons for granting ceritorari advanced by Eades under the heading "Introduction" are also meritless, including the reason that, "There is no Supreme Court decision on whether and under what circumstances judicial immunity applies to court reporters and clerks."

(5) The statement by Eades that "for reasons known only to the Attorney General of the State of Wisconsin, the respondents have never been criminally prosecuted," implying misconduct or worse

on the part of the Attorney General, is unsupported by anything in the record, and reveals a regrettable and dismal ignorance of Wisconsin law, for reasons shown.

## ARGUMENT

### THE REASONS PRESENTED BY EADES FOR GRANTING THE WRIT OF CERTIORARI SOUGHT HEREIN ARE DEVOID OF MERIT.

### A.

The principal reason advanced by Eades as to why the writ sought herein should issue is embodied in that part of her Argument II heading which reads, "The decision by the Court of Appeals essentially abrogates the judicial act requirement contrary to prior decisions of this Court and other circuits [sic] . . ." (Petition, p. 14).

This "judicial act" argument or reason is, it is submitted, nothing more

than a thinly disguised contention that this Court should grant certiorari herein in order to eviscerate the defense of absolute judicial immunity by reviving an exception thereto briefly recognized by this Court in 1869, but with such recognition swiftly and wisely withdrawn only three years later. Such recognition occurred in Randall v. Brigham, 7 Wall. 523, 526, 19 L. Ed. 285, 291 (1869), wherein the Court, referring to "judges of superior or general authority", said "They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, unless perhaps where the acts, in excess of jurisdiction, are done maliciously or corruptly." (Emphasis supplied.) But the principle of judicial immunity was pruned of the qualifying language above emphasized when the Court in Bradley v.

Fisher, 13 Wall. 335, 351, 20 L. Ed. 646, 651 (1872) held that, "[J]udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." (Emphasis supplied.) As to the repudiation of such exception, see also Sparks v. Duval County Ranch Co., Inc., 604 F.2d 976, 980 n.6 (5th Cir. 1979); Harper v. Merckle, 638 F.2d 848, 857 (5th Cir. 1981).

It is plain that Eades, in making her "judicial act" argument, conceives of the acts of Judge Sterlinske, Reporter Huff, and Clerk Ewald, of which she complains, as not being "judicial acts" because of what she alleges to be their illegal and malicious nature. See Para. 27, F.A.C., Supp. App. 124-25;

Para. 46, F.A.C., Supp. App. 131. But such concept runs afoul of this Court's holding in Stump v. Sparkman, 435 U.S. 349, reh. denied, 436 U.S. 951 (1978), that, ". . . A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'[7] 13 Wall., at 351." (Footnote omitted; emphasis supplied; 435 U.S. at 356-57.)

In language which is most apposite herein, as showing how meritless is Eades' "judicial act" argument or reason, the Fifth Circuit has stated:

> In this imperfect world, . . . where even the moon has a dark side, this manifestly necessary policy [of absolute judicial immunity] has the unfortunate effect of insulating not only the robe, but the person within it, from

> being called to account for actions that may be illegal, even corrupt, as is alleged here. This undesirable side effect of an otherwise valuable prescription can, as to the magistrate himself, be safely mitigated only slightly. All authorities[6] recognize that when a judge acts in a 'clear absence of all jurisdiction' he is not protected. But any broader or less explicit inroad upon the robe's immunity in an attempt to reach its wearer would invite recurring attempts at enlargement, ruinous in terms of judicial time and funds expended to defend--even successfully--against them. Thus the rule of judicial immunity from damages, with its single, bright-line exception, is as broad as, but no broader than, is necessary.

(Emphasis supplied; Sparks v. Duval County Ranch Co., Inc., cited supra, 604 F.2d at 980).

In closing this sub-argument, certain language from Harper v. Merckle, cited supra, 638 F.2d 848, warrants quoting, in view of certain features of the F.A.C. In note 9 thereof (id. at 856), the Court stated in part,

"Moreover, as our analysis infra at p. 859 & n.17 reveals, we can envision no situation--where a judge acts after he is approached qua judge by parties to a case--that could possibly spawn a successful § 1983 suit". (Emphasis supplied.) And here, of course, as Paras. 13 and 14, F.A.C., Supp. App. 117 show, Judge Sterlinske took his actions complained of only after Eades' post-conviction counsel sought a trial transcript from the trial court in order to file post-conviction motions in the Eades' criminal case, still before such court after Eades' conviction and sentencing.

Harper v. Merckle, which ruled that certain actions of a judge there in question were not "judicial acts" under circumstances markedly different than those here involved, cautioned that "our

holding is exceedingly narrow and is tailored to this, the rarest of factual settings[17]" (footnote omitted; 638 F.2d at 859), then stating that, ". . . we hold only that when it is beyond reasonable dispute that a judge has acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives, and it further appears certain that no party has invoked the judicial machinery for any purpose at all, then the judge's actions do not amount to 'judicial acts.' . . ." (Emphasis supplied; id.) Under this definition of when a judge's actions are not "judicial acts", it is plain, in the light of the F.A.C., first, that it appears certain that Eades, through her post-conviction counsel, did invoke "the judicial machinery" through his transcript request; and such invocation, in

and of itself, would under such definition preclude any holding that Judge Sterlinske's actions in question do not amount to "judicial acts." Second, it is plain that even if all the facts well-pleaded in the F.A.C. are taken to be true, it cannot be said to be "beyond reasonable dispute" that Judge Sterlinske "acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives."

B.

A second reason presented by Eades for issuance of the writ she seeks, though presented somewhat obliquely, is that there is a conflict between the decisions of the federal courts of appeals as to whether judicial immunity should extend to court reporters and

clerks of court.[6] Eades hyperbolically describes such conflict as "raging" (Petition, p. 26), though neither the case law she cites evidencing such conflict, nor any other case law, bears out such description. This Court has made it plain that only where such a conflict is "real and embarrassing" (emphasis supplied) will it serve as a valid reason for granting certiorari. See Layne & Bowler Corp. v. Western Well Works, 67 L. Ed. 712, 714 (1923). The conflict here in question, though real

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[6] In agreement with Seventh Circuit decisions granting judicial immunity to clerks of court and court reporters is the law of the Ninth Circuit. See Stewart v. Minnick, 409 F.2d 826 (9th Cir. 1969). The Second, Fifth, and Eighth Circuits hold that a court reporter has only a qualified immunity to a damages action. See, Green v. Maraio, 722 F.2d 1013, 1018-19 (2d Cir. 1983); Rheuark v. Shaw, 628 F.2d 297, 305 (5th Cir. 1980); Holt v. Dunn, 741 F.2d 169 (8th Cir. 1984).

enough, is plainly not "embarrassing," since it merely shows federal courts of appeal of two different minds on the question of conferring judicial immunity on court personnel other than judges, with even the courts refusing such immunity to such personnel recognizing that they possessed another formidable immunity to an action for damages, i.e., the so-called "qualified" immunity. Clearly, then, Eades' "conflict between the circuits" reason for granting certiorari herein is meritless.

Finally, it should be noted that even if the conflict above-described were "embarrassing," it would provide valid reason for granting certiorari herein only as to so much of the decision here in question as accorded judicial immunity to Reporter Huff and Clerk Ewald.

C.

A third reason advanced by Eades for granting certiorari herein is that "The decision by the Court of Appeals extends absolute judicial immunity to the ministerial activities of clerks and court reporters in conflict with decisions of other circuits and contrary to the principles underlying judicial immunity as enunciated by this Court." (Petition, p. 26.) The gambit of labelling (or, as here, mis-labelling) a part of the judicial process as "ministerial", resorted to by Eades in advancing her "third reason" above described, has rightly been viewed as impermissible in Lowe v. Letsinger, 772 F.2d 308, 313 (7th Cir. 1985), wherein the Court said:

> . . . To label some part of the judicial process as administrative or ministerial and thereby encroach on the

> judicial defense of absolute immunity as disturbing as the judicial conduct may be, cannot be permitted. The functioning of the system is more important than some particular and rare judicial misdeed which can be dealt with in other ways, by appellate processes, the ballot, or, in the federal system, by impeachment or other sanctions, 28 U.S.C. § 372(c).

(Emphasis supplied.)

D.

Eades, under the heading "Introduction", has advanced reasons other than those above discussed for granting certiorari herein. See Petition, pp. 9-14. It is submitted that they are also meritless, including the reason that, "There is no Supreme Court decision on whether and under what circumstances judicial immunity applies to court reporters and clerks." (Petition, p. 11.)

E.

In closing this argument, it must be noted that Eades, magisterially pronouncing that the respondents herein violated a Wisconsin criminal statute, then states "for reasons known only to the Attorney General of the State of Wisconsin, the respondents have never been criminally prosecuted." Note 2, Petition, p. 9. This ugly and unfounded language, implying misconduct or worse on the part of the Attorney General, is unsupported by anything in the record, and reveals a regrettable and dismal ignorance of Wisconsin law. Under such law, the Attorney General has no supervisory control over district attorneys in their prosecutorial work at the trial court level; under it, it would have been the District Attorney of Rusk County, Wisconsin, who would have decided if the

actions of respondents in question warranted criminal prosecution; and under such law, prosecutorial discretion is very broad, and is in no sense or degree controlled by the Attorney General of Wisconsin, so that he would be privy to how and why such discretion was exercised.

## CONCLUSION

For the reasons above shown, the Petition should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX OF RESPONDENTS,
DONALD J. STERLINSKE AND
BRADLEY W. HUFF

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OF RESPONDENTS, DONALD J. STERLINSKE
AND BRADLEY W. HUFF

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARGUERITE EADES,

COMPLAINT

Plaintiff,

-vs- Case No. 85-C-824-D

DONALD J. STERLINSKE,

Defendant.

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## INTRODUCTION

NOW COMES the plaintiff Marguerite Eades by her attorneys, Fox, Fox, Schaefer & Gingras, S.C., by Robert J. Gingras and Mathews Law Office, by Daniel G. Mathews, and as and for a complaint against the defendant Donald J. Sterlinske alleges as follows:

## JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343.

2. This claim may be venued in the Western District of Wisconsin pursuant to

28 U.S.C. § 1391 insofar as the plaintiff resides in this district, and the acts alleged as the basis for plaintiff's claim occurred within the boundaries of said district.

PARTIES

3. Plaintiff Marguerite Eades (hereinafter referred to as "Eades") is an adult resident of Wisconsin residing at Woodruff, Wisconsin.

4. The defendant Donald J. Sterlinske (hereinafter referred to as "Sterlinske") is an adult resident of Wisconsin residing at Route 1, Tony, Wisconsin 54563.

GENERAL ALLEGATIONS

5. On or about June 16, 1980, Eades was charged criminally with two counts of welfare fraud by the State of

Wisconsin in the Circuit Court for Rusk County. Sterlinske presided as judge throughout the course of the criminal proceedings against Eades.

6. In approximately December of 1980, a trial was held regarding the above-described criminal counts before a jury.

7. Eades was convicted at the conclusion of the trial. At no time during the course of the trial was there held an instruction and verdict conference. The absence of an instruction and verdict conference prevented Eades from receiving a fair trial.

8. Eades' attorney in the criminal proceeding, Harry Hertel (hereinafter referred to as "Hertel"), requested a transcript for purposes of filing post-conviction motions at some time within

three months following Eades' conviction.

9. After Hertel requested a transcript for purposes of filing post-conviction motions, Sterlinske called his court reporter into his office and dictated a "certificate" in which he made certain representations as to what had occurred with respect to the instruction and verdict conference.

10. Upon information and belief, the above-described "certificate" materially misrepresented what actually occurred in the criminal proceedings. Sterlinske directed the court reporter to date the certificate as of the date of the trial, even though this was not the date on which it was prepared and signed. Moreover, Sterlinske directed the reporter to indicate in the certificate that a full-fledged instruction conference had taken place in

Sterlinske's chambers even though such a conference had not in fact occurred.

11. The certificate was stamped "Filed" with the Clerk's Stamp as of October 23, 1980, and the Court's docket sheet was changed to indicate that the certificate had been filed on that date, even though the document was filed on a much later date.

12. Upon information and belief, on some day after January 29, 1981, Sterlinske caused the aforementioned certificate to be stamped by the court reporter with the Clerk of Court's filing stamp, indicating that it had been placed in the court file on October 23, 1980, the original trial date.

13. Upon information and belief, on some day after January 29, 1981, Sterlinske caused the docket sheet record to be altered by the court reporter to

indicate that the afore-described certificate was filed on October 23, 1980, the original trial date.

14. Sterlinske falsified the certificate and caused it to be inserted in the record with the intention of misleading others regarding the proceedings at trial.

15. Upon information and belief, Sterlinske did not provide any of the parties to the criminal proceeding with notice of the insertion of the certificate in the record.

16. In a letter to Attorney Hertel, Sterlinske further attempted to persuade Hertel not to challenge the jury instructions and verdict. Sterlinske, in his communications to Attorney Hertel, represented that "the file in the matter indicates that there was a conference held between all of the attorneys, the

instructions were gone over carefully, and they were approved by both the district attorney and Mrs. Eades' counsel at that time." Said misrepresentation was fraudulent in nature and made with the intent to deceive the parties including counsel of record.

17. In his decision on post-conviction motions, Sterlinske, without reference to his certificate, falsely stated:

> Prior to the submission of the verdict and the charge to the jury, the clerk's minutes indicate that a conference was held in chambers, and the attorneys for the parties stipulated and agreed that the verdicts as submitted to the jury were approved by both and likewise there was no object to any of the instructions as proposed by the Court. This was accomplished at 3:43 p.m. after the closing of the testimony of the parties.

The Clerk's minutes did not indicate any of what the respondent purported that

they contained. Sterlinske denied Eades post-conviction motions.

18. Upon information and belief, Sterlinske engaged in the above-described actions so as to mislead the parties and appellate courts as to what had occurred at the trial.

19. The acts alleged above were done intentionally, willfully, wantonly, maliciously, and with reckless disregard of Eades' constitutional rights as protected under the Fourteenth Amendment and 42 U.S.C. 1983.

20. As a direct and proximate result of Sterlinske's acts as described above, Eades was unjustly required to serve a prison term of approximately two years.

PLAINTIFF'S CAUSE OF ACTION

21. That as and for a cause of action against the defendant Sterlinske under 42 U.S.C. 1983, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

22. The acts of Sterlinske as described above deprived Eades of life, liberty and property without due process of law, denied her equal protection of the laws, and abridged her privileges and immunities; all in violation of her constitutional rights as secured by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. 1983.

23. That the actions engaged in by Sterlinske as described above were committed under the color of state law and in violation of Eades' rights under the Fourteenth Amendment and 42 U.S.C. 1983.

COMPENSATORY DAMAGES

24. As a direct and proximate result of the actions engaged in by Sterlinske as described above, Eades has suffered damages in the form of loss of wages, mental and physical distress, pain and suffering, humiliation, loss of reputation and diminished earning capacity and will continue to suffer said damages in the future.

PUNITIVE DAMAGES

25. That the course of conduct of Sterlinske as described above was deliberately undertaken and was committed in wanton, willful or reckless disregard of Eades' rights, and in view of the aggravating circumstances set forth above, was attended by malice and vindictiveness on the part of Sterlinske.

26. As a result of the course of conduct of Sterlinske, Eades is entitled to punitive damages.

WHEREFORE, plaintiff Eades demands:

(a) Trial by jury on all claims for relief.

(b) Back wages including interest.

(c) Compensatory damages in a sum sufficient to compensate Eades for her injuries.

(d) Punitive damages in an amount sufficient to punish Sterlinske and to deter others.

(e) Reasonable attorney's fees and costs and disbursements pursuant to 42 U.S.C. § 1988.

(f) Grant such other and further relief as the Court deems just and proper.

Dated this 3rd day of September, 1985.

Respectfully submitted,

MARGUERITE EADES, Plaintiff

By

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/s/ Robert J. Gingras
Robert J. Gingras

By
MATHEWS LAW OFFICE
Daniel G. Mathews
103 N. Hamilton
Madison, WI 53703

/s/ Daniel G. Mathews (RJG)
Daniel G. Mathews

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARGUERITE EADES,
FIRST AMENDED COMPLAINT
Plaintiff,

-vs- Case No. 85-C-824-S

DONALD J. STERLINSKE,
BRADLEY W. HUFF, and
JULIE EWALD,

Defendants.

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## INTRODUCTION

NOW COMES the plaintiff, Marguerite Eades, by her attorneys Fox, Fox, Schaefer & Gingras, S.C., by Robert J. Gingras, and Brynelson, Herrick, Bucaida, Dorschel & Armstrong, by Steven J. Schooler, and as and for a complaint against the defendants Donald J. Sterlinske, Bradley W. Huff, and Julie Ewald, alleges as follows:

## JURISDICTION AND VENUE

1. Jurisdiction is conferred on

this Court by 28 U.S.C. § 1343.

2. This claim may be venued in the Western District of Wisconsin pursuant to 28 U.S.C. § 1391 insofar as the plaintiff resides in this district, and the acts alleged as the basis for plaintiff's claim occurred within the boundaries of this district.

PARTIES

3. Plaintiff Marguerite Eades (hereinafter referred to as "Eades") is an adult resident of Wisconsin residing at Woodruff, Wisconsin.

4. The defendant Donald J. Sterlinske (hereinafter "Sterlinske") is an adult resident of Wisconsin residing at Route 1, Tony, Wisconsin and is a former judge of Rusk County.

5. The defendant Bradley W. Huff (hereinafter "Huff") is an adult resident

of Wisconsin residing at Ladysmith, Wisconsin.

6. Upon information and belief, the defendant Julie Ewald (hereinafter "Ewald") is an adult resident of Wisconsin, residing at 1002 Bruno Avenue, Ladysmith, Wisconsin.

GENERAL ALLEGATIONS

7. On or about June 16, 1980, Eades was charged criminally with two counts of welfare fraud by the State of Wisconsin in the Circuit Court for Rusk County.

8. Sterlinske held the title of circuit court judge throughout the course of the criminal proceedings against Eades.

9. Huff held the title of court reporter throughout the course of the criminal proceedings against Eades.

10. Ewald held the title of clerk (for Sterlinske) throughout the course of the criminal proceedings against Eades.

11. In approximately October of 1980, a trial was held regarding the above-described criminal counts before a jury.

12. Eades was represented by Allan Kenyon (hereinafter "Kenyon"), the city attorney for Ladysmith (county seat for Rusk County), during the trial. Eades was convicted at the conclusion of the trial. At no time during the course of the trial was there held a jury instruction and verdict conference (hereinafter "instruction and verdict conference). The absence of a jury instruction and verdict conference prevented Eades from receiving a fair trial.

13. After the trial, Harry Hertel (hereinafter "Hertel") replaced Kenyon as Eades' attorney in the criminal proceedings against her. Hertel requested a transcript for purposes of filing post-conviction motions at some time within three months following Eades' conviction.

14. After Hertel requested a transcript for purposes of filing post-conviction motions, Sterlinske called his court reporter Huff into his office and dictated a "certificate" in which he made certain representations as to what had occurred with respect to the instruction and verdict conference. (See Exhibit "A" attached hereto and incorporated herewith).

15. Upon information and belief, the above-described "certificate" materially misrepresented what actually

occurred in the criminal proceedings. Sterlinske directed Huff to date the certificate as of the date of the trial, even though this was not the date on which it was prepared and signed. Moreover, Sterlinske directed Huff to indicate in the certificate that a full-fledged instruction and verdict conference had taken place in Sterlinske's chambers even though such a conference had not in fact occurred. Finally, Sterlinske caused Huff to alter the trial transcript so that it would be consistent with its false certificate.

16. The certificate was stamped "Filed" with the Clerk's Stamp as of October 23, 1980, and the Court's docket sheet was changed to indicate that the certificate had been filed on that date, even though the document was filed on a much later date.

17. Upon information and belief, on some day after January 29, 1981, Sterlinske caused the aforementioned certificate to be stamped by Huff with the Clerk of Court's filing stamp, indicating that it had been placed in the court file on October 23, 1980, the original trial date, and placed in the court file.

18. Upon information and belief, on some day after January 29, 1981, Sterlinske caused Ewald to alter the docket sheet record to indicate that the afore-described certificate was filed on October 23, 1980, the original trial date, even though the certificate was filed on a much later date.

19. Sterlinske, Huff, and Ewald all knew that the certificate was false. The participation of each in the stamping of the certificate and the insertion of it

into the record was done with the intention of misleading others, including Eades and her counsel, regarding the proceedings at trial.

20. None of the defendants provided any of the parties to the criminal proceeding with notice of the insertion of the certificate in the record. Defendants did not provide said notice so as to mislead others, including Eades and her counsel, regarding the proceedings at trial.

21. After Hertel placed Sterlinske on notice that he intended to challenge the jury instructions, the jury verdict, and the instruction and verdict conference, Sterlinske further attempted to persuade Hertel not to challenge the jury instructions, jury verdict, and the instruction verdict conference. Sterlinske, in a letter to Attorney

Hertel of April 9, 1981, represented that "the file in the matter indicates that there was a conference held between all of the attorneys, the instructions were gone over carefully, and they were approved by both the district attorney and Mrs. Eades' counsel at that time." (See Exhibit "B" attached hereto and incorporated herewith). Said misrepresentation was fraudulent in nature and made with the intent to deceive the parties including counsel of record.

22. In his decision on post-conviction motions, Sterlinske, without reference to this certificate, falsely stated:

> Prior to the submission of the verdict and the charge to the jury, the clerk's minutes indicate that a conference was held in chambers, and the attorneys for the parties stipulated and agreed that the verdicts as submitted to the jury were approved by both and likewise there was no objection

> to any of the instructions as proposed by the Court. This was accomplished at 3:43 p.m. after the closing of the testimony of the parties.

The Clerk's minutes did not indicate any of what Sterlinske purported that they contained. Sterlinske denied Eades post-conviction motions.

23. Sterlinske sentenced Eades to two years in prison.

24. On or about April 30, 1981, Sterlinske communicated in writing to the Parole Board for the State Department of Health and Social Services (hereinafter "Board") regarding Marguerite Eades. One of the purposes of Sterlinske's letter (See Exhibit C attached hereto and incorporated herein) was to dissuade the board from granting Eades parole at her initial parole hearing.

In his letter, Sterlinske stated:

> It has been my policy not to express any feelings one way or

> the other when I receive notices of the initial parole hearing. I would, however, be rather interested in being apprised of this inmate's present attitude as it relates to the circumstances surrounding these offenses. It is usually inconsistent to accept full responsibility and acknowledge improper conduct for which an inmate may be incarcerated on one hand, and then proceed with alternate remedies in seeking an appeal which at least seems to indicate an unwillingness to accept or recognize and acknowledge improper conduct. (Emphasis supplied).

In writing this letter, Sterlinske was also attempting to dissuade Eades from pursuing her appeal so that his criminal misconduct would not be discovered during her appeal.

25. Eades' request for parole was denied at her initial parole hearing. Eades served nine months in prison. Eades was in prison from December 16, 1980 to approximately September 6, 1981.

26. Upon information and belief, Sterlinske engaged in the actions described in paragraphs 21 and 22 so as to mislead the parties and appellate courts as to what had occurred at the trial.

27. The acts of Sterlinske as described in paragraphs 14 through 22 and 24 above constitute illegal acts in violation of Wis. Stats. 946.72(1) (tampering with public records is a Class D felony), and Wis. Stats. 946.12 (misconduct in public office includes intentionally refusing to perform a nondiscretionary ministerial duty, does an act in excess of lawful authority or which he knows is forbidden by law, or in his official capacity as officer or employee, makes an entry in which a material respect is intentionally falsified) and also constitute non-

judicial acts occurring outside Sterlinske's jurisdictional authority and absolute immunity as judge.

28. At times relevant hereto, defendants engaged in a pattern and practice of fraudulently altering court records in legal cases other than the criminal proceedings regarding Eades as described above.

29. As a result of the fraudulent actions of defendants as described in paragraphs 14 through 22, 24 and 27-28, Eades did not obtain knowledge of said actions until a short time after February 11, 1985, when she received a letter from James E. Doyle, Jr. in his capacity as attorney for the Judicial Commission for the State of Wisconsin. (See Exhibit "D" attached hereto and incorporated herewith).

PLAINTIFF'S FIRST CAUSE OF ACTION

30. That as and for a cause of action against the defendants Sterlinske, Huff and Ewald, under 42 U.S.C. § 1983, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

31. The acts of Sterlinske, Huff and Ewald, as described above, deprived Eades of liberty without due process of law, and denied her the equal protection of the laws, all in violation of her constitutional rights as secured by the Fourteenth Amendment of the United States Constitution.

32. That the actions engaged in by Sterlinske, Huff and Ewald, as described above, were committed under the color of state law and in violation of Eades' rights under the Fourteenth Amendment of

the United States Constitution as described in paragraph 31.

33. That the actions engaged in by Sterlinske, Huff and Ewald, as described above, directly and proximately caused Eades to incur and suffer those damages as described in paragraph 45 below.

PLAINTIFF'S SECOND CAUSE OF ACTION

34. That as and for a second cause of action against defendants Sterlinske, Huff, and Ewald, under 42 U.S.C. § 1983, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

35. The acts of Sterlinske, Huff and Ewald, as described above, deprived Eades of her right to a fair trial, a fair and impartial jury trial, effective assistance of counsel, a fair and

impartial judge, and fair consideration of post-verdict motions and appeal based upon an accurate record, contrary to those due process guarantees as secured by the Sixth and Fourteenth Amendments of the United States Constitution.

36. The actions engaged in by Sterlinske, Huff and Ewald, as described above, in violation of Eades' rights under the Sixth and Fourteenth Amendments of the United States Constitution, were committed under color of state law.

37. That the actions engaged in by Sterlinske, Huff and Ewald, as describe above, directly and proximately caused Eades to incur and suffer those damages as described in paragraph 45 below.

PLAINTIFF'S THIRD CAUSE OF ACTION

38. That as and for a cause of action for civil conspiracy against

defendants Sterlinske, Huff and Ewald, the plaintiff Eades hereby realleges all of the paragraphs previously set forth in this complaint as if set forth fully herein.

39. That this cause of action for civil conspiracy is a state law claim brought pendent to plaintiff's federal causes of action as described above.

40. That the defendants Sterlinske, Huff, and Ewald, agreed to, actually formed and operated a conspiracy to deprive Eades of her due process, liberty, fair trial and appellate rights by engaging in those wrongful and illegal acts as described in paragraphs 14 through 22, 24 and 27-28.

41. That each of the defendants Sterlinske, Huff and Ewald, acted and participated knowingly in the furtherance

of their conspiracy as described in paragraphs 14 through 22, 24 and 27-28.

42. That each of the defendants Sterlinske, Huff, and Ewald, were aware of, acquiesced, and assented to the illegal actions and scheme as described above in paragraphs 14 through 22, 24 and 27-28.

43. That the defendants Sterlinske, Huff, and Ewald had a unity of purpose or common design in understanding, or a meeting of the minds, as to those unlawful acts as described above in paragraphs 14 through 22, 24 and 27-28.

44. That the civil conspiracy of defendants Sterlinske, Huff, and Ewald, as described above in paragraphs 14 through 22, 24 and 27-28 and 40 through 43 caused damage to Eades as described in paragraph 45 below.

COMPENSATORY DAMAGES

45. As a direct and proximate result of the actions engaged in by defendants as described above, Eades has suffered damages in the form of loss of wages, mental and physical distress, pain and suffering, humiliation, loss of reputation and diminished earning capacity and will continue to suffer said damages in the future.

PUNITIVE DAMAGES

46. That the course of conduct of defendants as described above was deliberately undertaken and was committed in wanton, willful or reckless disregard of Eades' rights, and in view of the aggravating circumstances set forth above, was attended by malice and vindictiveness on the part of defendants.

47. As a result of the course of conduct of defendants, Eades is entitled to punitive damages.

WHEREFORE, plaintiff Eades demands:

(a) Trial by jury on all claims for relief.

(b) Back wages including interest.

(c) Compensatory damages in the sum of $1,000,000.00.

(d) Punitive damages in the amount of $1,000,000.00.

(e) Reasonable attorneys' fees and costs and disbursements pursuant to 42 U.S.C. § 1988.

(f) Grant such other and further relief as the Court deems just and proper.

Dated this 9th day of January, 1986.

Respectfully submitted,

MARGUERITE EADES, Plaintiff

By

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Robert J. Gingras

By
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Madison, WI 53703

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Steven J. Schooler

STATE OF WISCONSIN CIRCUIT COURT — RUSK COURT

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STATE OF WISCONSIN,

PLAINTIFF,

VS. D E C I S I O N

MARGUERITE EADES, CASE NO. 80 CR 82

DEFENDANT.

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Post conviction motions were filed on behalf of the Defendant by her substituted Attorney Harry Hertel.

On June 16, 1980, upon complaint of William Volkman, the Defendant Marguerite Eades was charged with two (2) counts of welfare fraud. One, securing food stamps for the month of October of 1979, from both Rusk County and Oneida County, such act being prohibited by law. As a second count the Defendant was charged from the period of October 22, 1979, thru June 30th, of 1980, of receiving AFDC and

public assistance through the Rusk County Department of Social Services in addition to medical assistance in excess of $250.00, and it is alleged that the Defendant was ineligible for such aid due to the fact that the Defendant's husband was not in fact an absent spouse under the qualifying prerequisites of the AFDC program.

It appears that the Defendant Marguerite Eades was previously living outside of Rusk County, and on or about October 22, 1979, moved a house trailer into the Bruce area, and she immediately made application for both food stamps for the month of October 1979, and also for aid alleging that she and her husband were separated and not living together. The Defendant's husband at that time was working for Sedlak Garage in Minocqua, Wisconsin, and it was alleged by the

department that he resided with Marguerite Eades in a house trailer in the Bruce area on weekends.

At the time of the application for aid the Defendant stated that she had been living in Vilas County, and was living on support from her husband, but it appears that she made application and did in fact receive food stamps from Oneida County during the month of October. She likewise on October 22 made application for food stamps and aid in Rusk County, and on November 2, received her first check in the amount of $896.00 representing $348.00 for the prorated month of October, and $548.00 for the month of November. Thereafter, she continued to receive such sum for herself and her minor children in the sum of $548.00 totalling gross payments in the

amount of basic aid in the amount of $4,732.00.

On or about June 30th when the Rusk County Department of Social Services discovered that Mr. Eades was in fact living with the family unit and that there was a duplicate application for food stamps during the month of October of 1979, they commenced an action for welfare fraud and the Defendant and her family thereafter moved out of the Rusk County area and withdrew from further assistance.

The testimony offered at the time of trial indicates that the Bruce Postmaster testified that Mr. Eades was in fact authorized to receive mail at the trailer at the Bruce address.

Betty Jenness of the Rusk County Department of Social Services testified that she had prepared the checks for the

Defendant, and examined the signatures and testified that the Defendant had received and in fact cashed the checks involved.

The Rusk County Treasurer identified the checks paid to the Defendant in the form of aid, and Jack Phillips of the Oneida County Department of Social Services testified that according to the Oneida County records Mrs. Eades did in fact receive food stamps from Oneida County for the month of October of 1979. He testified further that he made an attempt to locate Mr. Eades and found that he had no known address, and during the time that he was employed in Rhinelander was living out of a truck.

Loraine Flohr of the Rusk County Department of Social Services testified and identified the application and checks for food stamps received by the Defendant

for the month of October, 1979. She further testified that in the event that Mrs. Eades' husband did in fact reside with the family as a family unit he was not an absent spouse and Mrs. Eades was not, therefore, entitled to receive the aid to which she had applied. She testified further that in the event Mrs. Eades was separated from her husband she would then be eligible.

William Volkman the complainant and the investigator for the Rusk County Department of Social Services indicated that he had investigated the complaint of welfare fraud, and found that the trailer was registered in the name of Dale Eades Sr., and his wife the Defendant Marguerite Eades. He further discovered that Mrs. Eades in fact had received food stamps for the month of October of 1979, both from the Oneida County Department of

Social Services, and the Rusk County Department of Social Services, and that the electricity, trailer rent, and utilities were in the name of Dale Eades. He further testified that he had contacted Mrs. Eades the Defendant regarding the improper food stamps and the total number of vehicles inasmuch as the regulations at that time prohibited the owning of more than one motor vehicle. Mrs. Eades failed to give an adequate explanation for having made application for double food stamps, and that Mrs. Eades maintained that her husband wasn't living with her in Bruce. His further investigation indicated that the gas and the electrical connections were in the name of Dale Eades, and applied for on October 13, 1979, and that Dale Eades Sr., signed the lease for the trailer lot rental. The

certificate of title to the home indicates that the trailer home was jointly held between Dale Eades and his wife.

Dale Eades Sr., was sworn and stated that he was living with his wife at that time in the Minocqua area and having moved there either July 9th or 10th of 1980. He testified that he lived out of his truck most of the time and slept in his automobile, and that he was paying child support on a prior temporary order to the Vilas County Clerk of Court. He admitted that he signed the lease agreement and that he knew that his children were on welfare, and that he was attempting to reconcile with his wife. He further testified that he had prior difficulty that he was an alcoholic and that he and his wife had considerable financial difficulties since their

marriage. He testified further on cross examination that he was living in a hotel, however, he was unable to keep up with his expenses at that time and he then reverted to living out of his automobile. He admitted regularly visiting his family in Bruce, and he testified that the Defendant had 13 children six (6) of which were his, and that as of June 30th he moved to Minocqua and he had the support order in Vilas County removed, and that he resumed living with his wife in the Minocqua area.

Jean Freeberg the Parkview Trailer Court manager indicated that while the trailer was located in Rusk County that Mr. Eades had in fact signed the lease for the trailer space, and that he was responsible for the rent. She testified that she saw Mr. Eades in the area after

the parties moved in and that he became a more frequent visitor on weekends. She further testified that she assumed at the time the parties rented the trailer space that she assumed and took for granted that Mr. Eades was in fact going to live in the trailer with his wife.

Mr. Robert Madsen the manager of Lake Superior District Power Company stated that no official application was made, however, that the electricity was in the name of Dale Eades with trailer park Lot No. 19, and that it was placed in the name of Dale Eades and that the account was delinquent.

Leona Winter of the Wisconsin Gas Company stated that a meter order was made out in the name of Dale Eades on October 17, 1979, and that throughout the entire time that the trailer was parked

in the Bruce area the gas service was in the name of Dale Eades.

Donald Sedlak the owner of the Minocqua garage for whom Mr. Eades was employed testified that he never gave Dale permission to sleep there, however, on several occasions he did see him in and around the garage after working hours. He stated that he had no prohibition against him staying there but that he never checked up nor did Mr. Eades at anytime ever had his permission to stay over-night in the garage.

Officer Terry Erdman of the Ladysmith Police Department testified that on the 11th of April, 1980, he had stopped and talked to Dale Eades and that he had stopped him at about 5:00 A.M. on a Friday morning. Officer Erdman testified that Mr. Eades advised him that he was living in the trailer Court in

Bruce, and that he was on his way back to Minocqua, and that he had been there because his daughter had run away. Officer Erdman indicated that he gave Mr. Eades a warning and issued no traffic citation. On an additional occasion Mr. Erdman also stated that he had talked to Mr. Eades relating to a stolen bicycle, and that Mr. Eades gave his address as the trailer court in Bruce, Wisconsin.

Deputy Sheriff Gary Hawkins testified that on April 20th he was at the trailer house and that he talked to two(2) of the Eades children who advised him that their father was at home sleeping, and that Deputy Hawkins observed Mr. Eades within the trailer itself. He further testified that on April 26th he stopped a hitchhiker who was William Eades one of the minor children of the parties, who stated that

he was hitchhiking to Minocqua, and he further stated that he lived in Bruce with his father and that he came back on weekends, and he stated at that time that his father wasn't going back that weekend and, therefore, he had to hitchhike to get back to the Minocqua area.

Phyllis Podolak, a daughter of the Defendant, testified that she made the initial $50.00 deposit on the trailer, and that she was responsible for the selection of the area in which the trailer was placed.

Thereafter, Marguerite Eades testified that she was presently living in the Minocqua Trailer Court, that she had lived at Bruce, and she testified that she had been married since 1963, and that she had been separated on occasion and that she and her husband had not lived together for a long while. She

testified that she had been living in an old dilapidated house and the house was repossessed and she had to look for a place to rent and that one of her sons borrowed some money for the down payment on the trailer, and that she and her husband had the trailer placed in their names and they signed the initial mortgage at the time of its purchase. She further testified that her daughter placed the trailer lot in Dale Seniors name, and that the application was in her handwriting.

During the course of the trial the Plaintiff the State of Wisconsin was represented by Michael J. Devanie the Rusk County District Attorney, and the Defendant was represented through the Public Defender's Office by local counsel Attorney Allen Kenyon.

Prior to the submission of the verdict and the charge to the jury, the Clerk's minutes indicate that a conference was held in chambers, and that the parties and the attorneys for the parties stipulated and agreed that the verdicts as submitted to the jury was approved by both, and likewise there was no objection to any of the instructions as proposed by the Court. This was accomplished at 3:43 P.M. after the closing of the testimony of the parties. Thereafter, closing arguments were had, instructions to the jury were given, and the jury deliberated. Thereafter, a verdict of guilty to both counts was received in open Court with the Defendant, her counsel, and the district attorney being present.

The Defendant was released on bond and a pre-sentence investigation was

requested. The verdict was accepted, and the Defendant permitted to remain on bond until sentencing. After the pre-sentence investigation was received sentencing was set for December 9, 1980. After hearing arguments of the parties, and the Defendant having been given an opportunity to be heard, sentence was imposed to an indeterminate term of not more than two(2) years on the AFDC fraud, and one year concurrent on the food stamp fraud. Commitment was stayed for seven(7) days until December 16, 1980, to permit the Defendant to arrange for the care and support of her minor children pending her incarceration. Thereafter, she entered the institution on December 16th and remained there until this date.

Attorney Kenyon on behalf of the Defendant filed a request which was heard on December 16th requesting that the

Defendant be released on bond pending the filing of an appeal. This motion was denied for lack of merit. Thereafter and prior to any substitution of counsel, the Defendant's present attorney requested transcripts on January 16th, although no substitution of counsel was filed nor consent given by the Defendant's attorney of record. Thereafter, the transcripts have been filed and a number of motions set for hearing.

Duplicate motions for the release of the Defendant pending appeal was filed, heard, and denied on May 13, 1981, for the reason that no merit was shown for such request. A number of additional motions were filed and heard on May 22, 1981, and the original post conviction motions were filed March 26th although as of that time the Defendant's petitioning attorney was not the attorney of record

for this Defendant, and a considerable period of time elapsed prior to the securing of a substitution, and his appearance being authorized by the attorney and counsel who appeared at the trial of the matter and the State Public Defender's Office.

Thereafter on the 22nd of May the Defendant through her counsel filed a number of motions. Prior to that time counsel requested that the Defendant be released on a Writ of Habeas Corpus Ad Testificandum which request was denied for the reason that there was no showing that the Defendant's presence was required.

At the time of the hearing of the post-conviction motions request for a new trial was made basically on the allegation that errors were made at the trial, and that the jury instructions

were defective. There is no showing of any specific prejudicial error to the Defendant as it relates to the admission of the testimony at the time of the trial, and no showing of any ruling by the Court which was made upon any objection by either party. Likewise, counsel for both the State and the Defendant appeared prior to the argument to the jury and consented to the verdicts in the form and style in which it was prepared as well as the instructions that were prepared by the Court. The parties further stipulated that it would not be necessary to furnish written instructions to the jury, although they had been prepared in advance and were available. In accordance with the stipulation of the parties the Court approved the agreement, presented the verdict as agreed by the parties as well as the instructions which

were offered. The Defendant's request for a new trial on that basis is specifically denied.

The request for a new trial be granted on the basis of insufficient evidence is completely without merit. It was the Defendant's contention throughout the entire trial that she was not guilty of the welfare fraud count as it relates to the AFDC assistance, and an examination of the testimony indicates that there is ample testimony and credible testimony which the jury could have believed to substantiate its findings of a verdict of guilty. All of the circumstances surrounding the placing of the trailer in Rusk County in the name of the Defendant, the signing of the lease by the Defendant and her husband are items which well could have been considered by the jury and substantiate

its findings that the Defendant's husband was not in fact an absent spouse and that, therefore, the assistance granted was fraudulently received.

The allegation that the food stamp count was a misdemeanor, while perhaps erroneously referred to in some stages of the record as a misdemeanor carried with it a maximum term of one year with no place of imprisonment having been prescribed by statute. The preliminary examination related to the circumstances surrounding the granting of this aid, and the information as charged also charges the Defendant with this count, and the Defendant in no way was prejudiced as to whether or not the matter was tried as a misdemeanor or as a felony, and there is no substantive error indicated. Accordingly, the request for a new trial on that basis is denied.

Allegations that the two(2) counts were multiplicitous and that the counts were continuous in nature is completely without merit. While the same application for assistance may be used to substantiate benefits under the AFDC program and food stamp program and the medical assistance program, the actual offenses and the circumstances surrounding their occurrence are completely different and there is nothing duplicitous about the offenses or the circumstances surrounding their commission.

The other allegations relating to the Defendant and her representation at the time of the trial is likewise without merit. Attorney Kenyon represented this Defendant throughout the entire stages of this trial. As a matter of fact the record is quite clear showing that the

Defendant at the time of the preliminary hearing appeared without counsel, and that the Court refused to permit her to proceed without counsel and a new hearing date was set and counsel was arranged for this Defendant through the Public Defender system she having been found to be indigent and qualified for the appointment of local counsel. It is most important that all Defendants receive adequate representation throughout all of the stages of the criminal proceedings, and all Courts are charged with the responsibility to insure that the Defendant's rights are in no way violated. Throughout the initial return, preliminary examination, and jury trial in this matter Attorney Kenyon represented this Defendant. The record indicates his appearances, the manner in which he conducted the defense of this

Defendant, and his vigorous cross-examination of all of the prosecution witnesses. It is highly inappropriate for a substituted attorney who was not present during the course of the proceedings to review a cold record and commence a criticism of a fellow attorney merely because the attorney representing the Defendant did not elect to make a number of meritless motions which did not apply to the Defendant, and likewise proceed step by step in a manner as indicated in the Public Defender's guide. Each case must be determined on its individual facts, and the Defendant must be assured of a fair and equitable hearing and all of her constitutional rights guaranteed to her. There is absolutely no scintilla showing here that the Defendant was in any way prejudiced or that she was denied the benefit of

adequate counsel. The fact that the jury did not in fact believe her or her husband's testimony is certainly not evidence of any errors in the course of the hearing or any inadequacy of counsel appointed for her. It is well recognized that there are many appropriate alternate ways of the trial of a criminal matter, and the mere fact that one attorney may not object to a specific question or respond as another attorney may feel objectionable, certainly in no way supports an allegation of inadequacy or incompetence of counsel. Likewise the failure to try any criminal matter in the same manner and method as one attorney may proceed as compared with another is likewise no indication that the Defendant was in any way deprived of fair and competent representation. The allegation that a number of superflous motions and

questionable objections were not in fact made certainly in no way negates the representation afforded to this Defendant. She was represented throughout the entire proceedings by adequate counsel and competent counsel. His method and manner in trying the matter was adequate, and there is absolutely no merit to any of the criticisms leveled against him by substituted counsel.

Accordingly, all of the Defendant's post-conviction motions made and heard prior to this time be and the same are hereby denied.

Dated this 22nd day of May, 1981.

BY THE COURT:

/s/ D. J. Sterlinske
D. J. Sterlinske,
Circuit Judge